

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re REFCO INC. SECURITIES LITIGATION

Case No. 07-MD-1902 (JSR)

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This Document Relates to:

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KENNETH M. KRYS, et al.,

Plaintiffs,

Case No. 08-CV-3065 (JSR)

Case No. 08-CV-3086 (JSR)

-against-

CHRISTOPHER SUGRUE, et al.,

Defendants.

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KENNETH M. KRYS, et al.,

Plaintiffs,

Case No. 10-CV-3594 (JSR)

-against-

DEUTSCHE BANK SECURITIES INC., et al.,

Defendants.

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**DECLARATION OF PHILIP D. ANKER IN SUPPORT OF THE
BANKS' MOTION FOR SUMMARY JUDGMENT**

I, Philip D. Anker, hereby declare under penalty of perjury as follows:

1. I am a partner at the firm of Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Defendants Credit Suisse Securities (USA) LLC ("Credit Suisse") and Merrill Lynch, Pierce, Fenner & Smith, Incorporated, as successor-by-merger to Banc of America Securities LLC ("Bank of America"). I respectfully submit this Declaration in further support of the Motion for Summary Judgment by Credit Suisse, Bank of America, and Deutsche Bank Securities Inc. ("Deutsche Bank") (collectively, the "Banks").

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the Transcript of the Deposition of Robert T. Trosten, Refco Group Ltd., LLC (December 10, 2009 – December 11, 2009, January 8, 2010).

3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the Transcript in the criminal case captioned *United States v. Phillip Bennett*, 05-cr-1192 (S.D.N.Y. February 15, 2008).

4. Attached hereto as Exhibit 3 is a true and correct copy of an amended judgment in the criminal case captioned *United States v. Phillip Bennett*, 05-cr-1192 (S.D.N.Y. October 29, 2008).

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the Transcript in the criminal case captioned *United States of America v. Tone Grant*, 05-cr-1192 (S.D.N.Y. April 17, 2008).

6. Attached hereto as Exhibit 5 is a true and correct copy of a judgment in the criminal case captioned *United States v. Tone Grant*, 05-cr-1192 (S.D.N.Y. August 22, 2008).

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the Transcript in the criminal case captioned *United States of America v. Robert Trosten*, 05-cr-1192 (S.D.N.Y. February 20, 2008), Deposition Exhibit 2808.

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the Transcript in the criminal case captioned *United States of America v. Santo C. Maggio*, 07-SD-312 (S.D.N.Y. December 19, 2007), Deposition Exhibit 2871.

9. Attached hereto as Exhibit 8 is a true and correct copy of the Confidential Offering Circular, “\$600,000,000 Refco Finance Inc. 9% Senior Subordinated Notes due 2012” (July 22, 2004), Deposition Exhibit 163 (DBSI BC 133038 – DBSI BC 133271).

10. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the Transcript of the Deposition of Richard C. Breeden (September 24, 2012 – September 25, 2012).

11. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the Transcript of the Deposition of Richard Clark Abbott (September 24, 2012).

12. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the Transcript from the criminal case captioned *United States of America v. Joseph Collins*, 07-cr-1170 (S.D.N.Y. October 25, 2012 – November 16, 2012).

13. Attached hereto as Exhibit 12 is a true and correct copy of an email from Joseph Molluso, Credit Suisse, to Alan Ginsberg et al, Credit Suisse, “*Refco*” (June 26, 2003), Deposition Exhibit 871 (CSFB04243 – CSFB04251).

14. Attached hereto as Exhibit 13 is a true and correct copy of excerpts from the Transcript of the Rule 30(b)(6) Deposition of Credit Suisse, by its designated representative Joseph Molluso (March 26, 2009 - March 27, 2009).

15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the Transcript of the Deposition of Paul Kromwyk, Credit Suisse (March 10, 2009 – March 11, 2009).

16. Attached hereto as Exhibit 15 is a true and correct copy of a presentation, “*Regulatory Overview*” (March 2004), Deposition Exhibit 888 (CSFB-BC-0012108 – CSFB-BC-0012120).

17. Attached hereto as Exhibit 16 is a true and correct copy of excerpts from the Transcript of the Deposition of George R. Taylor, Thomas H. Lee Partners, L.P. (“TH Lee”) (November 11, 2009 – November 13, 2009, August 18, 2010).

18. Attached hereto as Exhibit 17 is a true and correct copy of a letter from Scott Schoen, TH Lee, to Phillip Bennett, Refco (April 16, 2004), Deposition Exhibit 7156 (THL/UCC 00011283 – THL/UCC 00011302).

19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts from the Transcript of the Deposition of Karim Assef, Bank of America (April 30, 2008).

20. Attached hereto as Exhibit 19 is a true and correct copy of excerpts from the Transcript of the Rule 30(b)(6) Deposition of Deutsche Bank by its designated representative William D. Addas (August 20, 2008 – August 21, 2008).

21. Attached hereto as Exhibit 20 is a true and correct copy of an agreement, “*Equity Purchase and Merger Agreement Among Refco Group Ltd., LLC, Refco Group Holdings, Inc., The Refco Acquisition Partners and Refco Merger LLC*” (June 8, 2004), Deposition Exhibit 1539 (WGM-L SS 00043733 – WGM-L SS 00043795).

22. Attached hereto as Exhibit 21 is a true and correct copy of excerpts from the Transcript of the Rule 30(b)(6) Deposition of Bank of America by its designated representative Bradford Jones (July 17, 2008 - July 18, 2008).

23. Attached hereto as Exhibit 22 is a true and correct copy of excerpts from the Transcript of the Deposition of Vikrant Sawhney, Deutsche Bank (February 7, 2008 – February 8, 2008).

24. Attached hereto as Exhibit 23 is a true and correct copy of excerpts from the Transcript of the Deposition of Aaron Peyton, Bank of America (April 17, 2008 – April 18, 2008).

25. Attached hereto as Exhibit 24 is a true and correct copy of a Declaration of George Stephanakis filed in *In re Refco, Inc. Securities Litigation*, No. 05 Civ.8626 (S.D.N.Y.) (May 5, 2009), Deposition Exhibit 2722.

26. Attached hereto as Exhibit 25 is a true and correct copy of excerpts from the Transcript of the Deposition of Ethan F. Tarby, Credit Suisse (July 13, 2009).

27. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from the Transcript of the Rule 30(b)(6) Deposition of Bank of America by its designated representative Simon Western (January 14 – January 15, 2009).

28. Attached hereto as Exhibit 27 is a true and correct copy of Amendment 5 of the Form S-1 filed by Refco Inc. (August 8, 2005), Deposition Exhibit 4138.

29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts from the Transcript of the Deposition of George Stephanakis, Cravath, Swaine & Moore LLP (“Cravath”) (November 18, 2009).

30. Attached hereto as Exhibit 29 is a true and correct copy of Amendment 6 of the Form S-1 filed by Refco Inc. (August 10, 2005) (BAS-CIV-0308216 – BAS-CIV-0308228).

31. Attached hereto as Exhibit 30 is a true and correct copy of twenty due diligence memoranda by Cravath.

32. Attached hereto as Exhibit 31 is a true and correct copy of the audited financial statements of Refco Group Ltd. for the fiscal year ended February 28, 2003 (CSFB-CIV-0015064 – CSFB-CIV-0015078).

33. Attached hereto as Exhibit 32 is a true and correct copy of an email from Holly Strutt, Davis, Polk & Wardwell LLP to Bradford Jones, Bank of America, “*REF0014582_Fwd:*

Refco—Historical Financial Statements” (July 21, 2004) (BAS-CIV0347341 – BAS-CIV0347389).

34. Attached hereto as Exhibit 33 is a true and correct copy of a due diligence memorandum from the files of Cravath (July 20, 2005) (CSMB00028014).

35. Attached hereto as Exhibit 34 is a true and correct copy of a letter from Grant Thornton to Credit Suisse First Boston LLC, et al. (July 22, 2004), Deposition Exhibit 210 (CSFB-CIV-0002836 – CSFB-CIV-0002841).

36. Attached hereto as Exhibit 35 is a true and correct copy of a letter from Grant Thornton to Credit Suisse First Boston LLC, et al. (August 5, 2004), (CSFB-CIV-0002895)

37. Attached hereto as Exhibit 36 is a true and correct copy of a letter from Grant Thornton to Credit Suisse First Boston LLC, et al. (August 10, 2005) (CSFB-CIV-0022870-0022877).

38. Attached hereto as Exhibit 37 is a true and correct copy of excerpts from the Transcript of the Deposition of Diron Jebejian, Credit Suisse (July 21, 2009 – July 22, 2009).

39. Attached hereto as Exhibit 38 is a true and correct copy of excerpts from the Transcript of the Deposition of William Frauen, Deutsche Bank (October 21, 2008).

40. Attached hereto as Exhibit 39 is a true and correct copy of an email from Robert S. Brown, Bank of America, to Michael D. McKay, Bank of America, “*REFCO Dellosso issues*” (June 4, 2004), Deposition Exhibit 205 (BAS-CIV0328691).

41. Attached hereto as Exhibit 40 is a true and correct copy of an email from Joseph Molluso, Credit Suisse, to Ritt Keerati et al, Credit Suisse (February 18, 2004), Deposition Exhibit 1280 (CSFB - CIV – 0079098 – CSFB-CIV-0079104).

42. Attached hereto as Exhibit 41 is a true and correct copy of excerpts from the Transcript of the Deposition of Scott Jaeckel, TH Lee (August 5, 2009 – August 7, 2009, August 25, 2010).

43. Attached hereto as Exhibit 42 is a true and correct copy of an email from Max Strasburg, TH Lee to John Berndsen, KPMG LLP, et al., “*Financial Call Materials*” (March 4, 2004) (SOP-CIV-044176 – SOP-CIV-044188).

44. Attached hereto as Exhibit 43 is a true and correct copy of a presentation to Credit Committee, Credit Suisse, “*Refco Acquisition Financing*” (March 26, 2004), Deposition Exhibit 920 (CSFB-BC-0010355 – CSFB-BC-0010442).¹

45. Attached hereto as Exhibit 44 is a true and correct copy of a letter from TH Lee to Phillip Bennett, Refco Group Ltd., LLC (April 16, 2004) (CSFB-CIV-0012807 – CSFB-CIV-0012826).

46. Attached hereto as Exhibit 45 is a true and correct copy of an email from Max Strasberg, TH Lee, to Aaron Peyton, Bank of America, “*RE0011244_*” (April 30, 2004) Deposition Exhibit 198 (BAS-CIV0325102 – BAS-CIV0325182).

47. Attached hereto as Exhibit 46 is a true and correct copy of an email from Craig Molson, Deutsche Bank, to Alice J Poor et al, Deutsche Bank, “*Refco Ratings Agency Book*” (April 27, 2004), Deposition Exhibit 57 (DBSI BC 061503 – DBSI BC 061585).

48. Attached hereto as Exhibit 47 is a true and correct copy of an email from Joseph Molluso, Credit Suisse, to Thomas Foley, Standard and Poors, et al., “*RE: Questions*” (May 6, 2004) (CSFB-CIV-0156199 – CSFB-CIV-0156201).

¹ The names of certain individuals on Credit Suisse’s Credit Committee have been redacted from this exhibit due to privacy considerations.

49. Attached hereto as Exhibit 48 is a true and correct copy of an email from Paul Kromwyk, Credit Suisse to Emma-Jane Newton, Credit Suisse (June 8, 2004) (CSFB-CIV-0128596 – CSFB-CIV-019012).

50. Attached hereto as Exhibit 49 is a true and correct copy of an email from Jamie Lewis, Deutsche Bank, to William Frauen et al, Deutsche Bank, “*Royce credit*” (May 18, 2004), Deposition Exhibit 552 (DBSI BC 231606 – DBSI BC 231624).

51. Attached hereto as Exhibit 50 is a true and correct copy of excerpts from the Transcript of the Deposition of Jamie L. Lewis, Deutsche Bank (April 3, 2008 – April 4, 2008).

52. Attached hereto as Exhibit 51 is a true and correct copy of an agreement, “*Equity Purchase and Merger Agreement Among Refco Group Ltd., LLC, Refco Group Holdings, Inc., The Refco Acquisition Partners and Refco Merger LLC*” (June 8, 2004) (CSFB-CIV-0011929 – CSFB-CIV-0012045).

53. Attached hereto as Exhibit 52 is a true and correct copy of an agreement, “*Equity Purchase and Merger Agreement Among Refco Group Ltd., LLC, Refco Group Holdings, Inc., The Refco Acquisition Partners and Refco Merger LLC*” (June 8, 2004), produced from the files of Cravath (CSMB00000979 - CSMB00001041).

54. Attached hereto as Exhibit 53 is a true and correct copy of a letter from BAWAG to Grant Thornton LLP, “*Standard Form to Confirm Account Balance Information with Financial Institutions*” (June 25, 2004), Deposition Exhibit 2777 (GT P 0052101 – GT P 0052102).

55. Attached hereto as Exhibit 54 is a true and correct copy of a memorandum, “*Refco Transaction Flow of Funds Memo*” (August 5, 2004) (BAS-CIV-0298532 – BAS-CIV-0298558).

56. Attached hereto as Exhibit 55 is a true and correct copy of excerpts from the Transcript of the Deposition of Santo Maggio, Refco Group Ltd., LLC (December 14, 2009 – December 16, 2009, January 6, 2010).

57. Attached hereto as Exhibit 56 is a true and correct copy of excerpts from the Transcript of the Deposition of Frank Mutterer, Refco Group Ltd., LLC (November 6, 2009).

58. Attached hereto as Exhibit 57 is a true and correct copy of excerpts from the Transcript of the Deposition of Richard Outridge, Refco Group Ltd., LLC (July 29, 2009).

59. Attached hereto as Exhibit 58 is a true and correct copy of excerpts from the Transcript of the Deposition of Peter James, Refco Group Ltd., LLC (November 13, 2009).

60. Attached hereto as Exhibit 59 is a true and correct copy of excerpts from the Transcript of the Deposition of Timothy Phillips, Refco Group Ltd., LLC (March 9, 2012).

61. Attached hereto as Exhibit 60 is a true and correct copy of excerpts from the Transcript of the Deposition of R. David Wallace (September 26, 2012 – September 27, 2012).

62. Attached hereto as Exhibit 61 is a true and correct copy of a Form S-4 filed by Refco Group Ltd., LLC (October 12, 2004), Deposition Exhibit 2615.

63. Attached hereto as Exhibit 62 is a true and correct copy of a Form S-4 filed by Refco Group Ltd., LLC (April 6, 2005), Deposition Exhibit 850 (REFCO-E-002108700 – REFCO-E-002108974).

64. Attached hereto as Exhibit 63 is a true and correct copy of an email from Henri Steenkamp, PricewaterhouseCoopers LLP (“PwC”), to James Wong, PwC, et al., “*Draft comments and disclosures*” (November 19, 2004), Deposition Exhibit 6009 (PwC Refco Class 0193969 – PwC Refco Class 0193999).

65. Attached hereto as Exhibit 64 is a true and correct copy of a Form 10-K filed by Refco Group, Ltd., LLC (July 1, 2005).

66. Attached hereto as Exhibit 65 is a true and correct copy of a Form 10-Q filed by Refco Group Ltd., LLC (July 15, 2005).

67. Attached hereto as Exhibit 66 is a true and correct copy of excerpts from the Expert Report of Richard C. Breeden, submitted by Plaintiffs in the above-captioned matter (June 29, 2012).

68. Attached hereto as Exhibit 67 is a true and correct copy of excerpts from the Expert Report of Richard Clark Abbott, submitted by Plaintiffs in the above-captioned matter (June 29, 2012).

69. Attached hereto as Exhibit 68 is a true and correct copy of a due diligence memorandum from the files of Cravath (July 8, 2004) (CSMB00027845).

I declare under penalty of perjury that the forgoing is true and correct.

Dated: New York, New York
December 17, 2012

By: /s/ Philip D. Anker
Philip D. Anker

WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Tel.: (212) 230-8800
Fax: (212) 230-8888

*Counsel for Defendants Credit Suisse
Securities (USA) LLC and Merrill Lynch,
Pierce, Fenner & Smith, Incorporated, as
successor-by-merger to Banc of America
Securities LLC*

Exhibit 1 through Exhibit 68 have been publicly filed in hard copy and on electronic disk with the Clerk of the Court pursuant to Special Master Hedges' Order dated December 14, 2012 (Dkt. 1717).